APPENDIX A — MEMORANDUM AND JUDGMENT OF THE SUPERIOR COURT OF PENNSYLVANIA DATED AND FILED DECEMBER 21, 1999

IN THE SUPERIOR COURT OF
PENNSYLVANIA

No. 1375 EDA 1999

COMMONWEALTH OF PENNSYLVANIA,

Appellee

v.

ROBERT J. BOGUE, A/K/A JACKIE WOOD,

Appellant

Appeal from the Order dated April 26, 1999, in the Court of Common Pleas of Montgomery County, Criminal, at No. 3578-98

BEFORE: DEL SOLE, HUDOCK and BECK, JJ.

MEMORANDUM:

This is an appeal from the order of the Court of Common Pleas of Montgomery County denying Appellant's Petition for a Writ of Habeas Corpus and ordering his extradition to Florida. We affirm.

The relevant facts are not in dispute. On September 23, 1981, Appellant pleaded guilty before the Martin County

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Circuit Court in Florida to charges of trafficking in cocaine and using a firearm during the commission of a felony. He failed to appear for sentencing. On June 27, 1989, he was arrested in Montgomery County, Pennsylvania, on charges of possession of marijuana with intent to deliver. On January 14, 1991, the Court of Common Pleas of Montgomery County sentenced him to five and one-half to eleven years' imprisonment.

On September 26, 1994, Appellant submitted formal written notice and requested final disposition of his Florida charges pursuant to Article III of the Interstate Agreement on Detainers (IAD), which is codified in Pennsylvania at 42 Pa.C.S.A. section 9101, and in Florida at section 941.45, Florida Statutes. The State of Florida took the position that it was under no obligation to begin proceedings to sentence Appellant until he completed his Pennsylvania sentence. The request was denied and the Florida Court of Appeals for the Fourth District affirmed, holding that the IAD does not apply to sentencing detainers. ***Bogue v. Fennelly***, 705 So.2d 575 (Fla. App. 1997).

On May 27, 1998, Appellant filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. section 2254 in the United States District Court for the Southern District of Florida. As of the date briefs were filed in this Court, this petition was still pending.

On June 16, 1998, Appellant was arrested as he was being released from custody at the State Correctional Institution at Graterford. The arrest was based upon a bench warrant issued in Florida due to his failure to appear for

sentencing on the 1981 conviction. On June 29, 1998, the Governor of the Commonwealth of Pennsylvania issued a warrant directing the extradition of Appellant. On June 30, 1998, Appellant filed a petition for a writ of habeas corpus in the Montgomery County Court of Common Pleas challenging his extradition. The court denied the petition, and this appeal followed.

Appellant raises two issues on appeal:

> 1. Was the Appellant deprived of the rights of due process of law and speedy trial under the federal and state constitutions where the lower court ordered his extradition notwithstanding the failure of the State of Florida to comply with the the [sic] provisions of the Interstate Agreement on Detainers Act?
>
> 2. Do the provisions of the Interstate Agreement [on] Detainers Act apply to a detainer arising from the Appellant's open sentencing matter in the State of Florida?

In ***New Mexico ex rel. Ortiz v. Reed***, 524 U.S. 151 (1998) (*per curiam*), the United States Supreme Court explained the limits placed on courts considering release on habeas corpus in extradition cases:

> "Once the Governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether

> the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable."

Id. at 152 (quoting ***Michigan v. Doran***, 439 U.S. 282, 289 (1978)). The Court continued:

> In case after case we have held that claims relating to what actually happened in the demanding State, the law of the demanding State, and what may be expected to happen in the demanding State when the fugitive returns, are issues that must be tried in the courts of that State, and not in those of the asylum State.

Id. at 153. Further, "[t]o allow plenary review in the asylum state of issues that can be fully litigated in the charging state would defeat the plain purposes of the summary and mandatory procedures authorized by Art. IV, § 2 [the Extradition Clause of the United States Constitution]." ***Doran***, 439 U.S. at 290.

At the hearing on Appellant's petition, Appellant's counsel stipulated that requirements (a) through (c) were satisfied. We need only consider whether Appellant was a fugitive.

"[I]t is well-settled that a person is a 'fugitive from justice' if he was present in the charging state when the offense was committed and thereafter leaves the charging

state, regardless of the reasons or motives for the exodus." ***Commonwealth v. Ferrari***, 545 A.2d 1372, 1375 (Pa. Super. 1988) (emphasis deleted). Appellant's guilty plea to the Florida charges establishes conclusively that he was in Florida at the time the offense was committed, so the final ***Doran*** requirement is satisfied and Appellant must be extradited to Florida. Both of Appellant's issues must be litigated there.

Order affirmed.

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BEFORE: DEL SOLE, HUDOCK and BECK, JJ.

JUDGMENT

ON CONSIDERATION WHEREOF*, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of* Montgomery *County be, and the same is hereby* AFFIRMED.

BY THE COURT:

s/ [illegible]
PROTHONOTARY

Dated: December 21, 1999

APPENDIX B — OPINION OF THE COURT OF COMMON PLEAS OF MONTGOMERY COUNTY, PENNSYLVANIA, CRIMINAL DIVISION DATED APRIL 26, 1996

IN THE COURT OF COMMON PLEAS OF
MONTGOMERY COUNTY, PENNSYLVANIA
CRIMINAL DIVISION

NO. 03627-89

COMMONWEALTH OF PENNSYLVANIA

VS.

JACKIE L. WOOD, a/k/a ROBERT JAMES BOGUE

OPINION

CORSO, J. **APRIL 26, 1996**

On August 23, 1995 a hearing was scheduled on "Defendant's Petition to Dismiss and Discharge with Prejudice" the detainer filed against him by the State of Florida. Following a conference with counsel, and a tentative agreement, a proposed Order was submitted to the Court by counsel for defendant. The Order was signed by the Court on August 23, 1995, dismissing the Florida detainer without prejudice to the State of Florida's right to lodge another detainer at a future date. On September 29, 1995, the Defendant filed a Notice of Appeal thus necessitating this Opinion.[1]

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1. Due to a breakdown in the Clerk of Court's office this appeal was time stamped upon receipt but not docketed or forwarded to the undersigned until February 26, 1996. However, there is no evidence before this Court of any breakdown in operation that in any way affected the actual filing of Defendant's Notice of Appeal.

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The appeal is frivolous and should be dismissed because it is from an agreed order prepared by the defendant's attorney, the appeal is not timely, it is not an appealable order, and there is no prejudice to the defendant.

Initially, it must be noted that a layperson choosing to represent themself in a legal proceeding assumes the risk that their lack of legal knowledge and training will defeat their case. *Smathers v. Smathers*, __ Pa. Super. __, 670 A.2d 1159 (1996); *O'Neill v. Checker Motors Corp.*, 389 Pa. Super. 430, 567 A.2d 680 (1989). While a Court may liberally construe a pro se party's arguments, it is clear that the Defendant is not entitled to any advantage in the prosecution of an appeal due to lack of legal knowledge and training. *Id.*

The Defendant failed to file a timely appeal of this Court's August 23, 1995 Order. Pennsylvania Rule of Appellate Procedure 903[2] specifically mandates that the party seeking to appeal must file a notice of said appeal within thirty days after the entry of the order from which the appeal is taken. Defendant's notice of appeal was not filed with this Court until after the expiration of this deadline.

> The timeliness of an appeal is jurisdictional, and the issue of timeliness may be raised, even sua sponte, at any stage of the proceedings. An untimely appeal must be quashed absent a showing of fraud or a breakdown in the court's operation.

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2. 42 Pa. R.A.P. 903.

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Thorn v. Newman, 113 Pa. Commw. 642, 647, 538 A.2d 105, 107 (1988). There is no evidence that any fraud or breakdown in court operation was responsible for Defendant missing the deadline for filing a timely appeal. Defendant's appeal is facially defective and should be quashed.

Rule §341 of the Rules of Appellate Procedure provides that "[A]n appeal may be taken as of right from any final order of an administrative agency or lower court." Section (b) of the Rule defines a final order as one that (1) disposes of all claims or of all parties, (2) is expressly defined as a final order by statute, or (3) is entered as a final order pursuant to subsection (c) of this Rule.

The August 23, 1995, Order at issue is not a final order under Rule 341. In *West v. Anderson*, 626 A.2d 606, 426 Pa. Super. 127 (1993), the Superior Court stated:

> An appeal will lie only from a final order unless otherwise permitted by statute. A final order is one which ends the litigation or, alternatively, disposes of the entire case. . . . Conversely, an order is interlocutory and not final unless it effectively puts the litigant out of court.

Id. at 607, 129 quoting *Praisner v. Stocker*, 459 A.2d 1255, 313 Pa. Super. 332 (1983).

> Where an order has the practical effect of precluding the party from further litigation of the claim, it is considered final for purposes of appellate review.

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Commonwealth v. Romolini, 384 Pa. Super. 117, 557 A.2d 1073 (1989).

The August 23, 1995, Order does not put the Defendant out of Court or preclude him from further litigation of his claims. In fact the Order not only granted the relief sought by the Defendant, but was entered pursuant to an agreement between the Commonwealth and the Defendant. If the State of Florida elects to pursue a new detainer, the substantive defenses that were available to him will still be available. There is no prejudice to the defendant.

The Order granting the Defendant's petition without prejudice to Florida's right to refile a new detainer at a future time is neither defined by statute as a final order nor is it a final order under 42 Fla. R.A.P. 341(c).

In essence, the Defendant is attempting to appeal a non-appealable interlocutory order, which was prepared and presented to the Court by counsel for defendant as an agreement, after the statutory appeal period had expired. The appeal should be quashed.

BY THE COURT:

s/ S. Gerald Corso
S. GERALD CORSO, J.

APPENDIX C — PER CURIAM ORDER OF THE SUPREME COURT OF PENNSYLVANIA FOR THE MIDDLE DISTRICT DENYING PETITION FOR ALLOWANCE OF APPEAL DATED JUNE 26, 2000

IN THE SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT

No. 0042 M.D. Alloc. Dkt. 2000

Petition for Allowance of Appeal from the
Order of the Superior Court

COMMONWEALTH OF PENNSYLVANIA,

Respondent

v.

ROBERT J. BOGUE A/K/A JACKIE WOOD,

Petitioner

ORDER

PER CURIAM:

AND NOW, this 26th day of June, 2000, the Petition for Allowance of Appeal is hereby **DENIED.**